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# ***FORSAKING THE CIVILIAN***

Review Essay by

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## **War's Paradoxical Spaces**

On the 19th of March 2011, NATO forces began a military intervention in Libya to implement United Nations Security Council Resolution 1973. The Resolution demanded an 'immediate ceasefire' between Gadaffi's forces and the 'rebel' uprising, and authorized the international community to establish a 'no-fly zone' and to use all means necessary - except foreign occupation - to protect civilians. With Gadaffi gone, both Libyans and the international community had great reason to celebrate. With the help of NATO, the rebels - now the 'National Transitional Council of Libya' - were able to overthrow a vicious forty-year dictatorship. By October 2011 Operation Unified Protector was over. There was no U.S. president proclaiming victory in front of a big banner, but there was an overwhelming sense that this time things were *different*: there were no lies about WMD that didn't exist and the mission had U.N. backing; it was the perfect war because it was for someone and something *else*. Maybe this time it really was 'mission accomplished'?

But what exactly was the purpose of the intervention in Libya? Wars and their causes are always overdetermined, but I pose this question because the central figure of this paper - the civilian - has a spectral presence in Operation Unified Protector. According to Canada's *Globe and Mail* newspaper at the time, 'Avoiding civilian casualties was main Libya objective'. In a press conference in September 2011, Canadian air force Lieutenant-General Charles Bouchard, and the man in charge of NATO operations in Libya assured NATO members and journalists that: "We are not there to kill civilians, we were there to protect civilians" and admitted that civilian loss of life personally affected him. But what perturbed Bouchard most was that NATO - and not only Gadaffi - was responsible for such losses: "[a]ny time there was a civilian death *and we caused it*, it got to me," (Koring 2011, emphasis added). Such remarks and headlines reveal the intervention in Libya as a paradoxical sort of war: a war where the primary purpose was not to *kill* the enemy but to *spare* civilians, but in order to do so entailed the killing of some other civilians. If it sounds confusing that's because it is. Yet in Libya, and indeed in all so-called 'humanitarian interventions', the civilian has become both the ends and means of late-modern war. *Saving* civilians has become the very intentional and deliberate goal of military action, but when it comes to *killing* them, the action is always deemed a collateral consequence of *something* Higher and more Moral. In a classical biopolitical formulation we arrive at a situation where saving civilians requires killing them, and in-turn killing them requires saving them.

In other civilian news, the U.S. policy of targeted assassination (also known in less loaded terms as 'targeted killing') has been ramped up and intensified over the last few years, especially under the Obama administration. The 'capture or kill' list now includes U.S. citizens, people born in the U.S. and with U.S. passports, as well as that of its allies, including British and German citizens. The killing of Anwar al-Aulaqi in Yemen in September 2011, proved particularly controversial precisely because he was a U.S. citizen. It is one thing to kill foreigners in the war on terror, but quite another to execute citizens of one's own nation<sup>1</sup>. True, they are not killed on U.S. soil (not yet anyway), but it nonetheless feels a little closer to home when it is Americans and not Others of the marginal global borderlands being killed. Yet the precedent which normalised the summary execution of U.S. citizens has a much longer history and we should not forget that the first ever targeted-killing strike in Yemen, back in 2002, also killed a U.S. citizen, 29 year old Kamal Derwish (Vann 2002). Nevertheless, the policy has come a long way since then and the hit list has seemingly been expanded yet again. It wasn't just Anwar al-Aulaqi that was killed in Yemen's al-Jawf province that autumn; just two weeks later, Abdulrahman Al-Aulaqi along with his cousin and eight other 'al-Qaeda militants' were 'liquidated' by a drone missile. In defence of the attack "U.S. officials" (they never have names), claimed that the son had associations with al-Qaeda and in response to claims that he was a minor, insisted that Abdulrahman was a 21 year old adult. A week later the al-Aulaqi family released his Colorado birth certificate. He was just sixteen years old. No evidence has been given as to his involvement and role in al-Qaeda.

### Deliberate Killing?

Civilians, forsaken, obliterated - or saved - are much in the news, and they have been for a long time. Ever since the early 19th Century, when the term 'civilian' began to denote a non-combatant, newspapers were blotted with the blood of the civilian. Today

<sup>1</sup> This seems to be the approach taken by the American Civil Liberties Union (ACLU) who have focused much of their efforts on the Al-Aulaqu case.

a Google search for "civilian" returns nearly 12 million articles, whereas "dead civilian" generates 21 million. But while civilian suffering is not new, its historic and geographic contours and conditions, its discourse and practice, are constantly changing. In this paper I attempt to draw-out some of these changes, and to highlight the different ways in which the civilian has been apprehended in three contemporary texts on the subject of civilians in war. The civilian is both an idea and a reality and the conceptualization of the relationship between the two affects how we may think and act toward civilians in the 21st Century. The three books I would like to draw from are Helen Kinsella's (2011), *The Image before the Weapon*; Hugo Slim's (2007) *Killing Civilians* and Steven J. Rockel & Rick Halpern's (eds.) (2009), *Inventing Collateral Damage*. Reading these three texts against each other then, I comment on what is at stake in contemporary approaches to questions of the civilian.

If the three books agree on one thing, it is that civilian deaths have been a constant feature of the landscape of war. The two monographs and the edited collection take different approaches to what Slim calls the "civilian question". The historical trajectories and geographical composition of each text are excitingly diverse and often imaginative. Kinsella takes us back to the 11th Century and the Medieval period, demonstrating a radical indeterminacy of the distinction between civilians and combatants, an indeterminacy which "will *always* result in violations"<sup>2</sup> (p.189, emphasis in original). Slim begins with a massacre in Bakedu (Liberia) in 1990 but does not stay there very long; he offers a rich polka-dot history and geography of civilian suffering, drawing on his experience as a humanitarian for Save the Children and the U.N.. Rockel & Halpern start their history in the 18th Century, though they foreground Empire - '*Civilian*

<sup>2</sup> A similar argument is put forward by Patrica Owens: "From the bombings of Serb residential neighbourhoods, bridges and hospitals to the destruction of Afghan refugee convoys, a series of dramatic and well-publicised events in recent military campaigns have come to be labelled 'accidents'. Political and military leaders have sought to ensure that all non-combatants who die in the course of these so-called 'humanitarian wars' are portrayed as doing so 'accidentally'." (Owens 2003: p. 596)

*Casualties, War and Empire*’ is the subtitle - and argue that collateral damage had its antecedents and precedents in the colonial encounter, and even before as Gregg (chapter 7) shows. Although in one way or another all three books are about the civilian, their focus is different: Kinsella is interested primarily in the legal dimensions of the civilian, Rockel and Halpern in the politics of naming and euphemism while Slim concentrates on the moral dimensions of where, how and why civilians suffer in war.

Of all the texts, Slim offers perhaps the most gruesome account of civilian deaths in war; he writes about the charred bodies, raped women and systemic massacres that mark the norms of war. What is more, he is convinced that such “anti civilian” thinking and behaviour is quite deliberate: “Some commentators speak today as if civilian suffering or the intentional killing of civilian populations is a novelty. But this is very far from the truth” (p.3). From one time-place to another he presents case after case of the various ways in which civilians suffer and die in war. It is an ambitious book because as well as documenting and describing such atrocities, Slim also tries to account for *why* civilians are targeted, *why* people are drawn to kill the innocent and *how* they are mobilized - by the state and the ‘individual psyche’ - to do so. These are all very complex questions, not least because as I noted above, war is necessarily overdetermined. Yet as devastating as his interrogative account is, Slim retains a resolutely optimistic humanism and in the closing chapter he enquires: “How can we convince people that there are such things as civilians in war and that deliberately killing and harming them is wrong?” (p.251).

The answer is not straightforward of course, and it is compounded by what Slim refers to as “civilian ambiguity” (the title of chapter 5), the idea that it is often difficult to tell civilians and combatants apart. Civilian ambiguity is a point of agreement between Kinsella and Slim, though they draw *radically* divergent conclusions from it. But while Slim recognises the *difficulty* of distinguishing between civilians and combatants, he implies that such ambiguities are ultimately, if not easily, resolvable. He argues that “if

the civilian idea is as strong as it is ancient, it should somehow be able to come through such a discussion [on civilian ambiguity] intact.” (p.188) But isn’t the ‘problem of the civilian’ precisely its *fragility*, and not its strength? The civilian, never intact in the first place, is unlikely to emerge with any more clarity in contemporary debates about civilian status. But how is Slim able to maintain that the civilian is at the same time both fragile and intact? Does this not contradict his own argument?

Slim recounts how in his discussions of today’s wars, people have challenged him by asking “what is a civilian?” This is the crucial question, I think, and it frames Kinsella’s whole account. But Slim goes on to claim that “people find this question much harder to answer in the heat of actual war than in academic seminars and the meeting rooms of humanitarian agencies” (p.182). The implication is that the civilian question is *resolvable* in theory; that it *is* possible to tell apart, legally, philosophically and rationally, civilians from combatants. The problem of ambiguity arises, according to Slim, only when the irrationality of war gets in the way of good reasoning; the civilian idea therefore fails only in moments of “*extremis*” (p.183). For Slim, therefore, the civilian is not an ontological question, but a problem made and unmade by political will; i.e. the problem is one of compliance.

### Zones of Indistinction

This simplistic resolution of the civilian question is precisely what Kinsella agitates against. Slim assumes that the principle of distinction rests on a categorical difference between combatant and civilian, whereas, as Kinsella would argue, it is the distinction that *produces* the difference (p.6). Kinsella notes how the study of international law and international relations is consistently restricted to the study of the dimensions of compliance, a “framing [that] excludes an analysis of the very politics that informs and produces international institutions and creates international order” (p. 5-6). The focus on compliance, however, presumes that “which the atrocities of conflict so brutally belie – that the combatant and civilian are coherent and determinant categories” (p.5). *So it is in theory and in law*

- and not just the 'fog of war' - that the categories must not be taken as self evident. This is not to say that civilians and combatants do not exist, but that their existence is a production: "the significance and strength of the categories of combatant and civilian are provisional and, as such, must be consistently reiterated to ensure their status and grant them sanctity." (p.5).

Kinsella's argument is important for two reasons. First, in noting that the principle of distinction lays at the heart of International Humanitarian Law (IHL), and yet paradoxically also signals its most "radial crisis", she invites the reader to consider that the edifice of Law and Reason rest upon shaky foundations. Normatively, ethically and politically this matters because "[...] indeterminacy will *always* result in violations." (p.189). Second, Kinsella problematizes the categories of the civilian and combatant by examining the discourses that produce and sustain them. She shows how the taken-for-granted categories have been imbued with power, politics and ideology, shaped by particular gendered and imperial institutions and interests. It is on gender and imperialism that Kinsella really offers something new, shattering both the canon of international law and its conventional histories.

*Image before the weapon* is a genealogy of the concept of distinction. Using Foucault's concept of a series - the relationships among three discourses - Kinsella traces how discourses of gender, innocence and civilization (the title of the first chapter) "like red threads, mark the history of the principle of distinction" (p.7). For Kinsella, these discourses have been deployed to secure notions of a civilized - predominantly Christian European - 'us', distinguished from a barbaric, necessarily 'guilty' subhuman 'them'. Beginning her genealogy with an analysis of piety, mercy, honour and chivalry in the Middle Ages, Kinsella demonstrates that the conventional histories of international law (including those by canonical authors such as Theodor Meron; Michael Walzer and James Turner Johnson) are wrong to harbour nostalgias about these ideas from the past. She argues that the legacy of chivalry entailed soldiers acting in a *civilizing* (i.e. often brutal) manner - against non-Chris-

tian pagans - rather than actually acting in a *civilized* manner. She also shows how Empire was legitimated through the language of law, and therefore contributes to a healthy, but by no means dominant, post-colonial critique of international law (see Angie 2007; Comaroff and Comaroff 2006; Koskeniemi 2004; Orford 2006; Douzinas 2007). In chapter three, for example, she recounts the terrifying violence of The Requirement, a legal document read by the Spanish Conquistadores to those who were about to be colonized, giving them the 'choice' to surrender (and become slaves) or fight (and probably die). The power of the law in this passage terrifies, even today.

But this is not only a post-colonial critique of international law. Kinsella also brings gender into the fold. She argues, for example, that the granting of mercy historically (and always tied up with notions of modern-day 'restraint') is inseparable from the asymmetric power relationship resulting from the sovereign right to adjudicate on matters of life and death. He who shows mercy is civilized, exercising a capacity for judgement (and therefore reason and politics), whereas the subject who is granted pardon is passive and innocent. More often than not the innocent are constructed through a gendered lens, hence the common phrase and resulting outrage when 'woman and children are among the casualties'. Whereas some children grow into men though, the sex of women is fixed in the history of war and the figure of the innocent woman is a barometer against which the civility of nations can be judged. Yet to be "innocent" is not, if you will, *innocent*, because as Kinsella points out in an earlier essay:

"To be innocent in war, in the terms set by the laws of war, is to be deficient or lacking in a multitude of ways that in the end, implicitly if not explicitly, cites an incapacity for politics [...] Equally significant, an incapacity for politics is also, at least for Aristotle, an incapacity to become fully human. This is not benign, for it shows how the rights and protections of international humanitarian law are genealogically derived or grounded in what some might call 'subhumanity'. What this



portends is that international humanitarian law requires and produces “subhumanity” as the predicate for extending recognition of its rights or offering its protections. Insofar as this is true, then international humanitarian law must also promulgate particular understandings of what it is to be “barbarian” and to be “woman,” continually citing their incapacity to be fully constituted as human and as political.” (2006, p.185)

Therefore, holding onto the idea that women are somehow outside of war and should be spared is less about ‘doing good’ (Mahrouse 2010) and ‘saving women’ (Jiwani 2010) than it is about securing a masculine civilized identity. Of course, this has resonance in today’s debates about the co-option of feminism - or a particular kind of feminism - by the state to salvage the “abject status of the oppressed Muslim woman, whether in Afghanistan, Iraq, or in their nearest immigrant ghetto” (Thobani 2010, p. 128). The point, however, is that gender, innocence and sex (and sex difference) also *produce* the feminised, vulnerable figure of the civilian (or Muslim woman). The civilian was once she who could not carry a weapon (as Grotius claimed), but today it is she who through her very body, in all its child-bearing capacity, and centrality to the nuclear family cannot participate in war. Of course, this is challenged by the undeniable and widespread participation of women in war throughout the ages, but something very clever happens in the history of the laws of war to disguise this fact and produce a female innocence. The participation of “[w]omen in war disrupt[s] the order of things” (p. 80); it is both unusual, but in a crucial sense it is also *criminal* in that it deviates from the ‘natural’ comportment of women. This is how it becomes possible to kill women - and we must face the fact that women suffer, often more brutally and in very different ways to men in war - while still maintaining that ‘we’ are civilized. For as we find in Grotius: “a woman does not take the name of the enemy for “in so far as women play the part of men they are men and not women”. He concludes, “if women are guilty, then it will be that the guilt is destroyed rather than woman.” (quoted in Kinsella, p.80). Gendered innocence - in the form of

an incapacity for war but also an inability for politics - therefore forms the pivotal identity of the civilian. The good and true civilian is the feminine figure *par excellence*; she who literally cannot fight and must necessarily be spared.

Kinsella’s analysis complicates and adds nuance to Slim’s narrative. She takes international law and its categories seriously and therefore achieves something that Slim cannot. Kinsella is brilliant because she traces the ways in which the combatant and the civilian gain traction and definition through one another. Historically, all kinds of reasoning has been found to turn ostensible civilians into legitimate targets; we saw this in aerial bombing campaigns of World War Two and we witness it today in Gaza and elsewhere. Apparently civilians hardly ever die because the discourses of humanity do not apply to the enemy. Thus rather than deliberately killing civilians, it is perhaps more productive to think about the ways in which civilians become non-civilians even *before the commencement of battle*. This speaks to what Derek Gregory (2006) has called the ‘death of the civilian’. The destruction of the notion of *their* civilian precedes but also crucially *produces* the death and obliteration of real people, and this is the crucial link that Slim misses when he separates theory from practice and war from law. When Kinsella encourages us to think about the discourses which *produce* the civilian as an idea, she at the same time provokes us to consider its *unmaking* on the battlefield; that moment when civilians turn into combatants (see Weizman 2009; Jones 2010).

### Euphemism

The debate about collateral damage (that is incidental and accidental as opposed to intentional death and damage) brings us to the final text, *Inventing Collateral Damage*. Historians Stephen J. Rockel and Rick Halpern have put together an impressive collection of essays, the product of a conference, ‘Collateral Damage: Civilian Casualties from Antiquity through the Gulf War’ held at the University of Toronto in 2004. While Historians make up most of the contributors there are some offerings from outside of the discipline; Smita Tewari Jassal (Anthropology), Micheal

Pesek (African Studies), Timothy Brook (Chinese Studies) and Marc Herold (Economics and Women Studies). There is much here that should pique Geographers' interests, for as Jassal insists, "Historicizing our understanding of collateral damage is a necessary step in tracing the evolution of the concept and in recovering the layered meanings of the term in different contexts" (p.261). In the same way that Kinsella relinquishes "the comfort of preconceived categories" (p.7) the edited collection strives to problematize the ways in which collateral damage functions to produce a politics which excuses civilian death. There is no epistemological consensus, and a genuine interest in the histories of collateral damage brings forth an impressive array of approaches, all of which are grounded firmly in empirical and archival research. In this way, the comparative historical studies that form the basis of the book help to reveal the multiple *geographies* of war and its attendant collateral. The appeal to radical geographers is manifold; the attention to race, gender (especially Marlene Epp, Chapter 4) and colonialism create a remarkably sensitive reading of wars multiple valences of violence.

The collection makes many important contributions to the various literatures on civilian casualties in war. Chief among them is the argument that the suffering of civilians is a constant feature of the landscape of war. This might not sound novel, especially in light of Slim and Kinsella's analysis, but what is missing from these other works is a grounded empirical sense of how war has progressed (or not). *Inventing Collateral Damage* agitates against a dominant narrative among political scientists and historians that warfare is somehow getting better. Enter the language of technological-mastery and the so-called Revolution in Military Affairs (RMA). According to this narrative, the twentieth-century wars saw a massive increase in civilian casualties, World War Two being the superlative, from when casualties decreased dramatically and have virtually vanished in our 'clean wars' today. With the exception of today's terrorists and totalitarians, war is no longer about inflicting maximal suffering upon the enemy. Rather, wars - or more accurately 'our' wars (Gregory 2011) - are about security and the

mitigation of risk and suffering so that life (or at least some life) may flourish (Dillon and Reid 2008).

It is unsurprising that of any of the contributions it was Mark Herold's chapter (chapter 13), "Smarter" U.S. weapons kill more innocents' that sparked controversy among supporters of the wars in Iraq and Afghanistan. You'll have to read the book to find out exactly what happened but suffice it to say that National Public Radio (alongside others) were outraged by Herold's approach to civilian casualties and the statistics he presents. What follows is a stunning, and painfully contemporary statistical analysis of civilian deaths and the use of precision weapons. The idea of precision weapons as the "immaculate conception to warfare" (Col. Mackubin Owens, quoted on p. 303) is blown apart as it is revealed that "The greater the share of precision weapons employed, the higher the rate of civilian casualties" (p. 303). Herold's chapter disarms contemporary commentators like Human Rights Watch's Marc Garlasco who stated in 2008 that he had "not seen a single incident of civilian casualties in Afghanistan" (quoted in Herold and Peterson 2008: 2). One wonders which war Garlasco had been following.

Yet while Rockel is surely correct in his assertion "that all the great ideas about humanity at peace or at war did not apply to black (or brown) people [...they] were not seen as making up *peoples* or nations" (pp. 22), these sentiments were also not *limited* to the colony. We must go back to what Foucault (2003: p. 103) called the 'boomerang effect', to think about the ways in which the political and legal technologies exported by Europe to its colonies were also 'brought back to the West', resembling an 'internal colonialism'. Thus, for example, were such notions that Rockel summarises not already applicable in the metropole given what happened, for example, to the Commune in 1871 or in the Spanish Civil War? How could they forget the Spanish Civil War? Much violence was meted out on civilians as regular government or government-orchestrated violence, such as pogroms against Jews in late 19<sup>th</sup> and early 20<sup>th</sup> century, the mass murders of Romanies since the 17<sup>th</sup> century (see Thorpe 2010), and the assassination of working class leaders. The

problem of race and collateral damage are not limited to the relationship between Europe and its *external* others; it also has much to do with internal othering and the very making of “Europe” - and indeed the West - itself. But this is why we must also go *beyond* Foucault’s boomerang effect to consider the West/Other binary as far more complex space of interaction than Foucault himself had imagined. Boomerangs don’t always return when they are thrown; they get lost, or are picked up and thrown by somebody else. It might make more sense to think of the relationship between the West/Other as more resembling a series of what Jean and Jean Comaroff (2006: 8) describe as “complex north-south collaborations”.

The post-colony, the colony, the colonizer and the colonised are contained in each other, and today it is difficult to discern exactly where certain technologies came *from*. Perhaps it easier is to envision the direction they are *going*, and I’m thinking here of a series of terrifying events and precedents, including the assassination of Juan Charles De Menezes in London in 2007; the U.S. National Defence Authorization Act (NDAA) 2012, which sanctions the indefinite detention of U.S. citizens whether they are at home or abroad (in effect extending Guantanamo into the heart of the ‘American homeland’) (see U.S. Congress 2012<sup>3</sup>), the banning of face-covering Muslim veils including the niqāb and burqa in France in 2010, not to mention the forthcoming London Olympics, hailed as the UK’s ‘biggest mobilisation of military and security forces since the second world war’ (Graham 2012). Thus while it is impossible to be exhaustive it does seem that the absence of such analysis of warfare within what became “Europe”, together with the lack of attention paid to how these technologies travelled between Europe and its colonies, reflects a major weakness in the edited volume.

One final - but no less critical - oversight of the edited collection, which applies equally to Slim’s book, is that it fails to consider the legal dimensions of collateral damage. By failing to take seriously the international legal regimes which regulate armed conflict (IHL), the authors are unable to push the invention

of collateral damage to its maximal conclusion. Collateral damage was not only invented because the violence done to the colonies suddenly become too difficult to justify at the moment “serious claims were made to national sovereignty” (Rockel, p. 49). It was also invented to ensure that the continuation of such violence could proceed under the banner of the law: for it is precisely *through* the law, with all its technicalities, provisions and exceptions, that the language of collateral damage survives as a legitimate and legitimizing euphemism today.

### The Judicialization of War

In this final section, and by way of conclusion, I would like to pick up on this last point regarding the relationship between law, war and legitimacy. In their introduction to *Law and Disorder in the Postcolony*, John and Jean Comaroff (2006) argue that everyday life is becoming increasingly judicialized. Furthermore, they claim politics itself has “migrated to the courts”, shrouding itself in “culture of legality” where “[c]onflicts once joined in parliaments, by means of street protests, mass demonstrations, and media campaigns, through labor strikes, boycotts, blockades, and other instruments of assertion, tend more and more—if not only, or in just the same way everywhere—to find their way to the judiciary”. (p. 26-7). The parallels between politics and war are many - as Foucault (2003) showed us in *Society Must be Defended* - if not always perfect. Yet I wonder whether we are not witnessing, alongside the “judicialization of politics” (Comaroff and Comaroff 2006: 26), a corresponding judicialization of war?

Let it be clear that I am not suggesting that war is becoming more legal, or that the proliferation of legal discourses taking war as their object make war somehow better, more moral or humane. Formal law and legal judgement are accompanied by a rhetorical performance which wraps politics and war in a “skein of lawfulness” (Comaroff and Comaroff 2006: 38). The power of law often lies *elsewhere*, in what Jaques Derrida called its “mystical foundations” and what Walter Benjamin saw as its intrinsic “violence”; the ability of law to both *make* and *preserve*, but also

3 The relevant sections are: 1031 and 1032



*conceal* itself. What matters is not whether this war, or that strike is legal or illegal - for these are 'mere' technicalities - but *how* questions of legality are *perceived*. Surely this is the meaning of the phrase 'justice must be *seen* to be done', where the emphasis is on the seeing rather than the doing *per se*. Law has an audience; it speaks to an addressee, and in late-modern war the field of perception has been expanded to include a multiplicity of publics, both at home and abroad (see Smith 2006; Gregory 2011). Thus it is not so much that war and its politics are 'migrating to the court', as Comaroff and Comaroff would have it, but that the courts are in-fact migrating elsewhere, into the very spaces and ontologies of war, (re)signifying and (re)presenting it as they do. This is the so-called 'era of lawfare' (Goldstein and Meyer 2011), but it marks not so much a departure from the past, but an intensification; the use of law as a weapon of war - 'divine' and 'natural' law - is as old as war itself.

In order to understand the relevance of all this, let us return to where we began. In very different ways, and for very different reasons, the intervention in Libya and the U.S. targeted killing policy are saturated in legal questions. One of them is a classic 'humanitarian intervention', the other has proven a little more difficult to justify in strictly humanitarian terms and is scripted rather as a central component of the global war on terror (Savage 2012). Yet inasmuch as the drone policy is about eliminating terrorism in a bid for global security, it bears a significant similarity to the classic humanitarian war. Both are about eliminating one population in order to save another. The problem is that these biopolitical lines difficult to draw. Libya qualifies for intervention, Syria and Bahrain do not. At what point do such decisions become 'costly' for global security? Similarly, counter-terrorist operations in Pakistan are said to be 'working' (whatever that means) but are also known to attract widespread condemnation and even antipathy from locals and political leaders. One wonders what difference it makes, from the vantage point of s/he who is being bombed, whether the drone strike that kills them, or the humanitarian intervention that (fails) to save them is legal or not.

And yet it does matter, though not because it makes it any more right or wrong, moral or immoral, but precisely because it does *not*. While the lines between those who shall be saved and those who shall be forsaken in today's global humanitarian wars are increasingly difficult to draw, the one that proves - paradoxically - so easy and yet simultaneously absolutely impossible to draw is that between the civilian and the combatant. We must, therefore, treat with a special kind of skepticism the war whose purpose it is to save the civilian. Yet equally important is that we afford the same skepticism to any claim about the distinction between legal, legitimate combatant targets and illegal, illegitimate civilian targets.

Was Abdulrahman al-Aulaqi, that 16 year son of a wanted man, a legitimate military target? Was he a civilian, or was he a combatant? Perhaps we'll never know, or maybe we simply *cannot* know, for the distinction between the two is never stable and is constantly re-made by those with the power to define. Abdulrahman's death marks the ultimate indistinction that lies at the heart of this thing we call the civilian, and yet to his grandfather, Nasser al-Aulaqu there is nothing ambiguous it: "I urge the American people to bring the killers to justice. I urge them to expose the hypocrisy of the 2009 Nobel Prize laureate. To some, he may be that. To me and my family, he is nothing more than a child killer."<sup>4</sup> In the space of war that is becoming what Derek Gregory (2011) has called the 'everywhere war', a president's target to be destroyed is another's grandson, lover, parent or friend.

But there is one other kind of intervention that we must look toward in order witness how the law-legitimacy amalgam completes the forsaking of the civilian, and this - of course - is Kosovo. The NATO intervention in Kosovo in 1999 is important because it set a very peculiar precedent; it was and still is widely believed by the worlds' leading international legal scholars to be both illegal and legitimate. But how is an unlawful war possibly legitimate? Surely if it was legitimate is should also be legal? This is precisely what lawyers like Theodor Meron () argued. The law lagged

4 <http://www.time.com/time/world/article/0,8599,2097899,00.html>

behind, but is it only a matter of time before it catches up to the realities we are told are so radically different and new from anything that came before. Legitimacy wags the dog of law. Libya was legal, but not necessarily legitimate. The drone policy over Pakistan, Yemen and elsewhere is questionably legal and questionably legitimate. The terrible thing about the international law which frames these conflicts is that it progresses through transgressions, or to use Benjamin's terms, it preserves law by making law. When they are seen to be legitimate, illegal wars soon become legal, and for the battered, bruised and forsaken civilian 'legal wars' must be every bit as terrifying as 'illegal ones'.

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